

**OPINION
59-23**

June 9, 1959 (OPINION)

AGRICULTURE

**RE: Wheat Commission - "First Purchaser" - Definition Includes
Public Corporations**

This is in reply to your request for an opinion on Senate Bill
No. 166 of the 1959 Legislature on the following questions:

- No.1. Whether or not the statute was intended to apply only
 to private corporations, and
- No.2. Is this statute applicable to price support
 transactions with the Commodity Credit Corporation?

In your letter you state that the North Dakota statute does not specifically mention CCC, a government corporation, as do many other similar statutes in other states. This leads to the inquiry whether it was purposely left out so as to have the statute apply only to private corporations. The answers to these questions must be found on the interpretation of the state.

In doing so we must resort to the statutory definitions of the terms used in the bill. Under subsection 3, section 2 "the first purchaser" is defined as follows:

First purchaser means any person, firm, corporation, association, or partnership buying or otherwise acquiring, after harvest, the property in or to wheat from the grower and shall include a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, where the actual or constructive possession of wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;"

Subsection 4 of the same section defines "commercial channels."

Commercial channels means the sale of wheat for any use, when sold by the producer to any commercial buyer, dealer, processor, cooperative, or to any person, firm, corporation, association or partnership who resells any wheat or products produced therefrom;"

Subsection 5 defines "sale."

Sale shall include any pledge or mortgage of wheat, after harvest, to any person, firm corporation, association, or partnership;"

The first question revolves around the definition of "first purchaser" under subsection 3, more specifically on the terms "any person, firm, corporation and etc." whether under these terms the

CCC, the governmental corporation, is included.

In examining the statutes of Nebraska and Kansas on a similar Act it is observed that they did use the term "Any public or private corporation," but in examining the statute of Oregon it is observed that they used the identical language as quoted here, except North Dakota added further qualifying language. In comparing the North Dakota statute with the statutes of other states we observed that North Dakota selected portions from the various statutes or Acts. This in itself does not offer to much help and we must still construe the North Dakota Act on its own. The term "any person, firm, corporation" is susceptible to various interpretations depending upon the purpose of the statute and the object for which it was enacted. It is recognized that generally the word "corporation" used in the statute is construed to refer to private corporations and not to include municipal corporations. To this rule there are a number of exceptions. This rule, however, is not applicable where the statute clearly indicates an intention to the contrary. We are also aware that the government, whether federal or state, and its agencies are not ordinarily to be considered as within the provisions of the statutes unless the intention to include them is clearly manifest. This rule has special application to statutes by which prerogatives, rights, titles or interests of the government would be divested or diminished. 82 CJS 317.

This rule apparently is an outgrowth of the old law on prerogatives of the crown which provided that though the king may avail himself of the provisions of any acts of parliament, he is not bound by such as do not particularly and expressly mention him. In modern times this rule has been relaxed. Where the statute is for the public good and the protection and preservation of public interests, governmental corporations are included in such term. This is particularly so where no impairment of the sovereign powers will result. Now, specifically whether CCC comes within the term "any person or corporation" we will take notice of section 1-0128 of the North Dakota statutes which provides that;

The word 'person', except when used by way of contrast, shall include not only a human being, but a body politic or corporate."

Aside from this statute there are numerous decisions holding similarly. For instance, *Martin v. State* 24 Tex. 68, where the court said that of course the United States is not bound by the laws of the state, yet the word "person" in the statute would include it as a body politic and corporate.

This ruling was announced and affirmed in *Stanley v. Schwalby* 147 U.S. 508. A similar ruling was made in *State of Ohio v. Guy T. Helvering*, 292 U.S. 360. In 48 Pac. 8, the court in construing a covenant defending against "any person whosoever lawfully claiming or to claim" said it is of the opinion that the United States is a person within the scope of the language.

Similarly the court in 52 N.W. 711 held a county, in a legal sense, is a person.

In the above citations the issues did not involve nor was the court required to consider whether the inclusion of United States in the term "person" did or would impair or deprive the state or Federal Government of its sovereign powers.

I think we are safe to assume that the same principles of law apply to the term "corporation" as to the term "person" especially when used in a similar manner.

In 33 N.W. 626 Harty v. City of Dickinson the North Dakota Supreme Court said:

Word 'corporation' in its most extensive significance applies to a nation or state, and thus used the United States and the several states or commonwealths may be termed 'corporations'."

Senate Bill No. 166 does not diminish or deprive any sovereign rights of the Federal Government nor does it place any undue imposition on the Federal Government nor does it place any undue imposition on the Federal Government or its agencies. It amongst other things imposes a tax on wheat under certain conditions. The conditions are when a sale is made as defined by statute. The language used in this bill is so broad and sweeping that it would require a specific exception before there would be real justification for excluding the CCC from the term "corporation" as used in the statute. It is also recognized that the general rule is not applicable where the operation of law is on the agents or servants of the government rather than the sovereign itself.

As to the effect Senate Bill No. 166 will have on the federal governmental corporations it is recognized that it will require some additional bookkeeping and administration. This minor imposition, however, cannot be to seriously considered.

In view of the purposes for which CCC and Wheat Commission under Senate Bill No. 166 were created, both having mutual objectives generally, their programs should be in harmony with each other and serve to their mutual benefit.

As to question No. 1, it is our opinion that the statute or provisions of Senate Bill No. 166 apply to public corporations as well as private corporations which would include the CCC.

As to question No. 2, whether the statute is applicable to price support transactions we must again refer to the statutory definitions pertaining to "commercial channels" and "sales." Applying the statutory definition to the term "sale" as set out in subsection 5 of section 2 to the term wherever it appears in subsection 4 of section 2, and by so doing price support transactions would come within the provisions of Senate Bill No. 166. This conclusion is further strengthened by analyzing the statutory definition of a "first purchaser which includes the mortgagee, the pledgee, the lienor or other claimant having a claim against producer."

Also being aware that a great portion of the North Dakota wheat is disposed of through price support channels and through transactions with CCC it is very unlikely that the Legislature would have exempt

certain transactions which would have weakened the program they wished to put into operation. Such exemption would be totally and wholly inconsistent with the purpose for which Senate Bill No. 166 was enacted.

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